

Schools break rules

① Overtime denied to workers across U.S.

By BRIAN TUMULTY
Gannett News Service

Thousands of school bus drivers, teachers' aides, secretaries and janitors for rural school districts around the country are being denied overtime pay to which they are entitled.

The federal government doesn't know how prevalent the problem is nationwide. However, investigations so far have resulted in more than \$11.2 million in back pay for almost 7,000 workers.

Widespread violations of federal overtime and minimum-wage laws have been documented in several Southern states in the past three years, and lawyers on both sides agree that the hundreds of federal probes and private lawsuits could be the tip of the iceberg. The violations stem mainly from those employees who work two jobs in the same school district.

Unlike teachers, school nurses, guidance counselors, principals and other professional staff exempt from overtime, lower-paid school employees such as janitors and cafeteria workers are eligible for premium pay after 40 hours of work a week. In some cases, they haven't received it.

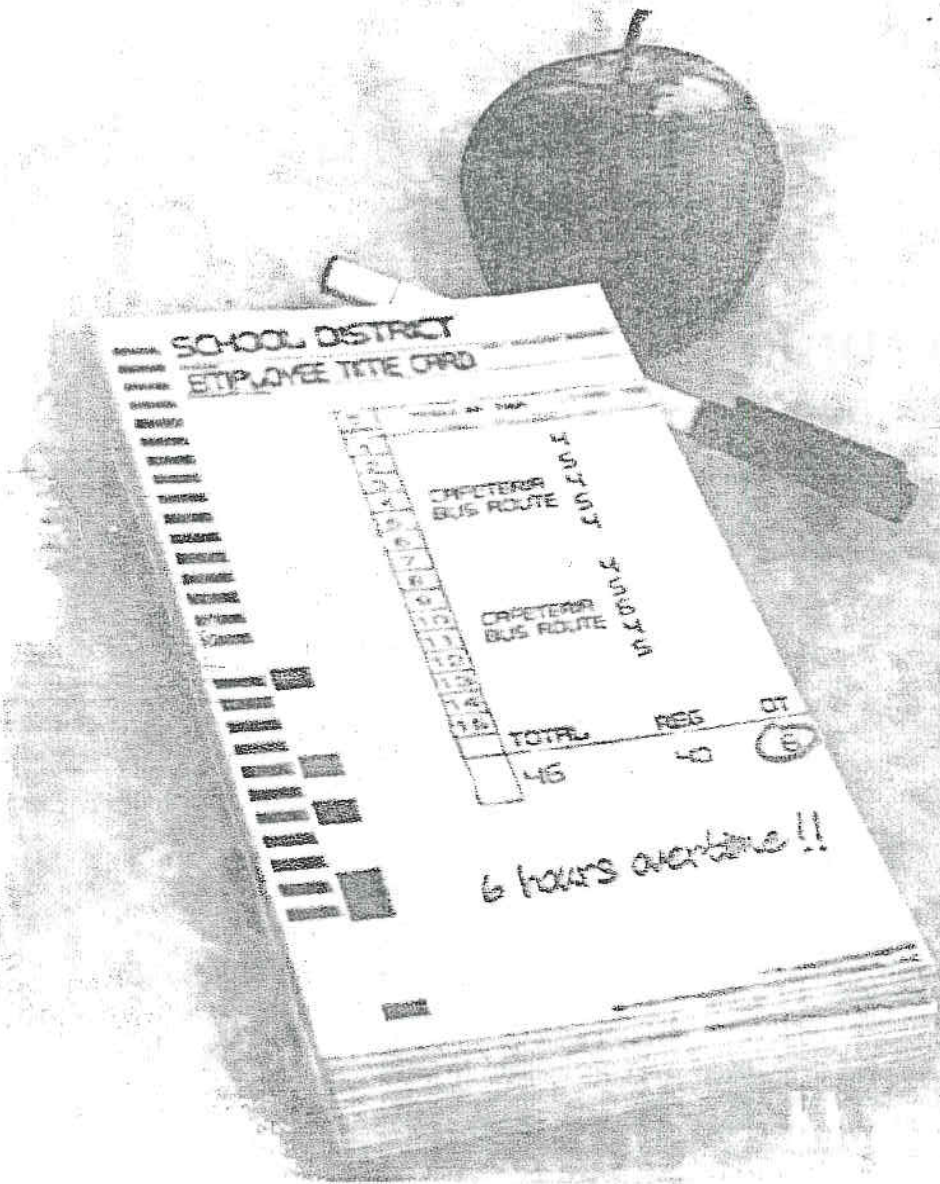


Illustration by Karl Alberts/The Coloradoan

Who's eligible for overtime?

An estimated 71 million workers are eligible for time-and-a-half pay if they work more than 40 hours in a week:

- Overtime eligibility is based on job duties and not on job title. For example, school cafeteria managers generally are not eligible for overtime because they are considered to oversee programs and not people.

- Professionals such as teachers and administrators are

not eligible for overtime no matter how many hours a week they work. School social workers generally are considered exempt as well.

- Although many school districts have policies against paying overtime, workers who put in more than 40 hours a week are legally entitled to overtime pay. However, employees who repeatedly violate a no-overtime policy by working unauthorized

overtime can be reprimanded and eventually fired.

- If you have a dispute about overtime eligibility, contact a lawyer or call the Labor Department's Wage and Hour Division toll free at (866) 4US-WAGE. The federal agency protects the identity of a worker who files a complaint and does not inquire about a worker's immigration status.

— Gannett News Service

PSD's solution

Of the 1,655 classified staff in Poudre School District, 250 employees work more than one job in the district, said Human Resources Executive Director Todd Gamble.

To keep such situations from happening here, Gamble said the district trains employees on filling out time cards and how to write down overtime. Several people check timecards, and staff know who those double-duty employees are so they can ensure all employees are properly compensated, he added.

"I can't tell you that we don't miss any," Gamble said. "It is a challenge, and we do our best."

Sometimes employees think

they're helping when they work a little extra, said Katy Montoya, president of the PSD Association of Classified Employees. But the district is quick to quash that belief.

"Federal guidelines say you will pay overtime worked," said Montoya, adding that she makes sure every employee understands that working off the clock is never expected or tolerated.

Two jobs, one district

Vernester Watts and the Hazlehurst City School District in Mississippi are an example of

See OVERTIME/Page A2

Overtime

Continued from Page A1

the overtime violations.

Watts drives a bus route in the morning, works in the cafeteria until 2 p.m. and drives an after-school bus route.

For her 57½-hour work-week, Watts made \$15,772 last school year. The Hazlehurst City School District treated the jobs separately, not realizing that Watts was entitled to overtime under federal law because she had one employer.

"They probably really didn't know," said Watts, 41.

When Watts heard that a Jackson, Miss., law firm was representing employees of other school districts who were denied overtime, Watts called the firm and persuaded co-workers to join her.

After three years of litigation that cost the Hazlehurst district more than \$43,000 in legal fees, officials agreed to settle Watts' claim by paying her and her lawyers \$20,000 to cover two years of unpaid overtime and another \$20,000 in damages. Watts split the money 50-50 with the law firm that represented her, the School Litigation Group.

Even though the federal government took another portion for income taxes, the payment represents a small fortune to her.

Shirley Sandifer, president of the Hazlehurst School Board, said the district now pays overtime and has kept its dual employees who drive a bus and do other work for the district during the school day.

"We hired a payroll attendance clerk to keep track of the time," she said.

Audits spur back pay

Aside from litigation involving workers like Watts that has been going on in federal courts, the Labor Department has concluded 18 formal investigations and 204 audits in school districts in the past three years. In five Southern states — Alabama, Arkansas, Georgia, Louisiana and Mississippi — these actions have yielded more than \$11.2 million in back pay for almost 7,000 employees, according to records released to Gannett News Service under the Freedom of Information Act.

Audits in Alabama found violations of the federal minimum wage of \$5.15 an hour.

In Poudre School District, substitute teachers are paid \$83 for a seven-hour work day, which equates to about \$11.86 an hour — well above the \$5.15 minimum wage.

Widespread problem

School districts across the nation face financial hardships, and PSD is no exception.

Last year during employee contract negotiations, district employees brought up concerns about leaving vacated

positions unfilled to save money, Montoya said.

"The expectation of what work needs to be done is still there," she said. "We don't have the staff to get it all done. But we have employees who are very dedicated, and they don't like leaving when the work is not done."

A majority of the cases brought to light nationwide involve small school districts and those in the South. But experts warn the problem could be more widespread.

Some school districts that serve cities of 150,000 to 200,000 people, such as Montgomery, Ala., and Jackson, Miss., also have been sued. The city schools in Huntsville, Ala., owed \$456,805 in back wages to 148 employees after a Labor Department audit.

"It's national," said Mike Espy, a lawyer who has appeared in television commercials in several states appealing to school employees to participate in the lawsuits. Espy, who served as secretary of agriculture during President Bill Clinton's first term, has been the public face for the School Litigation Group, the Mississippi law firm formed to file class action suits against school districts.

The Labor Department has no plans to notify the nation's

school districts of the typical violations found, but Wage and Hour Administrator Tammy McCutchen said her agency hopes to post its findings on the Internet.

"I think we'll continue to get requests from the school districts for help," she said. "South Carolina did come to us recently and asked us for help. And we have plans in 2004 to do a similar procedure like we did in Alabama. That is to reach out to their head educational officials and do training."

Also unlikely: a federal audit of every school district to check on compliance with the law.

"It would be really, really hard for us to do that in every state of the union as a resource issue," McCutchen said.

In the meantime, the School Litigation Group is widening its net and looking at new states in which to file lawsuits, including Oklahoma.

"It'll spread as long as they can make money," said Lisa Soronen, a staff attorney for the National School Boards Association.

Soronen has warned school districts that the only way to prevent the lawsuits from



What school districts can do

Experts advise school districts to consult with the Labor Department or a person familiar with labor law to learn how to comply with wage and hour laws.

Here are some things schools should keep in mind:

- **Record keeping.** In the cases the Labor Department examined, many districts did not use time clocks, and a significant number did not keep paper time sheets. If they did keep time sheets, employees often failed to sign out for lunch, or a third party, instead of the employee, signed out everyone at the end of a day.

- **Lunchrooms.** Districts that use teachers' aides to supervise lunchrooms must pay them for that time even if that's when they eat lunch. An alternative: Give aides an uninterrupted lunch at a different time.

- **Dual employees.** If a worker has two separate jobs with the same employer, such as driving a bus and working in the cafeteria, all the hours count toward eligibility for overtime.

- **Extended hours.** Janitors who work at a school in the morning, sweep classrooms after school and close up after community groups use a school at night must be paid for all hours worked. But janitors who arrive at dawn can be sent home by midafternoon. Others can sweep after school, beginning their shift in the afternoon and leaving at night.

- **Coaching.** Coaches and sponsors of school-related events who are not teachers or professional staff but who work for the school district are entitled overtime pay if those duties are for the same school district as their regular jobs. Teachers are exempt from overtime and can be assigned these tasks without extra pay.

- **Comp time.** Public employees voluntarily can opt to take 1.5 hours of comp time for each hour of overtime pay.